

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Maritime Communications/Land Mobile)	
LLC's Form 603 Assignment of Authorization)	File No. 0003767487
Application to Big Rivers Electric Corporation)	Call Sign: WQGF316
and Associated Requests for Waiver of)	
Certain AMTS Rules of A-Block Geographic)	
AMTS Mississippi River License)	

To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau.
Attn: Chief, Wireline Competition Bureau¹

Petition to Deny

“Petitioners”, as that term is defined in the standing section below, hereby file this petition to deny the above-captioned partition assignment of authorization application (the “Assignment” or “Application”) of the above-captioned license (the “License”) from Maritime Communications/Land Mobile LLC (“MCLM” or “Maritime”) to Big River Electric Corporation (“BREC”).

¹ Petitioners are listing the Wireless Competition Bureau (“WCB”) here since many of the facts revealed in this proceeding are relevant to the pending WC Docket No. 06-122 and the WCB pending proceeding regarding *Order*, DA 08-971, released August 26, 2008. A copy of this petition to deny will be filed in WC Docket No. 06-122. The WCB should be aware of these matters, including but not limited to, a recent MCLM admission in a pending New Jersey Court Case in which MCLM’s attorney admitted that Mobex Network Services LLC (“Mobex”) has been merged into MCLM. This completely contradicts what MCLM told the Wireless Telecommunications Bureau (“WTB”) in Auction No. 61. In addition, as shown in this petition to deny, Maritime Communications/Land Mobile LLC (“MCLM”) has made misrepresentations to the FCC that under FCC precedents (see Exhibit 1 hereto) require revocation of its licenses and its disqualification from Auction No. 61. Since the WTB appears unwilling to take action on MCLM’s repeated misrepresentations and lack of candor, (as of yet the WTB has taken no action against MCLM in light of clear misrepresentations of facts, lack of candor and rule violations in Auction No. 61 proceedings re: File No. 0002303355—see pending filings by Petitioners) then Petitioners are making the WCB aware of these matters so that it can, independent of the WTB, decide if it wants to uphold FCC rules and precedents (including under the Commission’s *Character Policy Statement*) and take appropriate actions against MCLM in order to protect the public interest from the abusive behavior of MCLM and send a message to other licensees not to make similar misrepresentations to the Commission.

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(i). Introduction and Summary

Petitioners show that they have standing and interest to file this petition including that they will be adversely affected by grant of the waiver requests in the Application and because they are competitors to MCLM and have *Ashbacker* rights to the License. In addition, Petitioners show that in other pending proceedings before the FCC, referenced and incorporated herein including with reference to specific facts and arguments therein, and with new facts that have arisen since those proceedings that MCLM does not have the requisite character and fitness to be a Commission licensee for repeated misrepresentations and lack of candor regarding its affiliates and their and its attributable gross revenues for Auction No. 61, operations of its site-based AMTS stations as PMRS, its agreement with NRTC, etc. These misrepresentations and lack of candor and the rule violations involved require a hearing at minimum, and eventually dismissal of the Application and revocation of the License and other FCC licenses held by MCLM and sanctions against its legal counsel. As shown herein, the Auction No. 61 Proceedings are relevant to the instant matter and must be considered here since the License was obtained from that auction and thus they are related. Also, Petitioners give technical explanations as to why grant of certain of the waiver requests in the Application will be detrimental to Petitioners and should not be granted: See Section on this Waiver Request topic below and Attachment 2. In addition, in that section below on the Waiver Request, and in Attachment 1, Petitioners show why the Waiver Request fails on other, *threshold* grounds, including since it is an attempt at wholesale conversion of AMTS into a Part 90 service:

1. Standing and Interest

Petitioners include the following entities that obtained in the two FCC AMTS auctions geographic AMTS licenses: Telesaurus VPC LLC (which obtained, among others, the Mississippi River area AMTS B-block license) ("TVL"), AMTS Consortium LLC ("ACL"),

and Intelligent Transportation and Monitoring Wireless LLC ("ITL"), and in addition, petitioners also include Telesaurus Holdings GB LLC ("THL") and Skybridge Spectrum Foundation ("SSF") which obtained by assignment certain disaggregated parts of the above-named LLCs' geographic AMTS licenses, including part of the TVL Mississippi River area B-block license: Said five entities are herein called the "Petitioners." TVL and SSF are direct competitors of MCLM per their AMTS B-block Mississippi River license area holdings. ACL and ITL had the only legitimate and lawful high bids in Auction No. 61 for the spectrum subject of the Application and thus have interest and standing to defend their rights to the subject spectrum, one of which, depending on the conclusion of the Auction No. 61 Proceedings noted below, should be the eventual licensee of the License. In addition, all of the aforementioned of Petitioners are direct competitors with MCLM in AMTS in other regions of the country where MCLM currently holds the other geographic license block or site-based incumbents. THL holds LMS licenses that may offer competitive services to those that MCLM can provide with the License.

In addition, grant of certain of the waivers requests made in the Application could have a severe adverse effect on Petitioners' who are adjacent channel (adjacent channel and adjacent block) licensees in AMTS and thus, they have standing to file to protect their licenses, and also to protest grant of waivers that would set a detrimental precedent to their contemplated use of the adjacent AMTS channels.

This petition should also be considered for a more full and complete record in the public interest and because it will be more efficient for FCC processes and the parties involved to address the facts and arguments raised herein now rather than have to later rescind any grant of the Application due to decision in favor of Petitioners' pending proceedings before the FCC that involve the License and MCLM. In addition, with respect to the new facts presented here, it was MCLM who had an obligation under Sections 1.17, 1.65, 1.2105, 1.2110, and other rules to

provide them to the FCC, not Petitioners, thus it is appropriate that the FCC accept this petition to consider those new facts.

2. FOIA Request

Petitioners intend to file a FOIA request to request an unredacted copy of the entire license purchase agreement between MCLM and BREC since, as shown herein, full disclosure of this information is in the public interest and due to MCLM's repeated misrepresentations before the FCC it is important that full disclosure be made to ascertain the full and true nature of the transaction. Petitioners also have a pending FOIA request (FOIA Control No. 2009-089) regarding MCLM's and Mobex's Form 499-A filings. Petitioners' reserve the right to supplement this proceeding with any relevant new facts they may receive from that pending request.

3. Reference and Incorporation

Petitioners hereby reference and incorporate the facts and arguments in their filings in the following filings in the following proceedings (the "Related Proceedings") rather than reiterate them here again (only the lead filing is listed for each below for convenience, but Petitioners hereby reference and incorporate all filings they have made in the Related Proceedings):

- (1) Application for Review, filed 4/9/07, filed by Petitioners, except for Telesaurus Holdings GB LLC (THL), regarding *Order on Reconsideration*, DA 07-1196 and File No. 0002303355 in Auction No. 61 (Errata version filed). (the "61 ApRev"). See also the recent supplement filed in this proceeding by Petitioners (THL and the rest of Petitioners filed separate supplements, however, THL's supplement only references and incorporates the others supplement), a copy of which is attached hereto as an exhibit. (the "Supplement")
- (2) Petition for Reconsideration, filed 4/9/07, by Telesaurus Holdings GB LLC regarding *Order on Reconsideration*, DA 07-1196 and File No. 0002303355 in Auction No. 61 (the "61 Recon").

((1) and (2) together, the "Auction No. 61 Proceedings")

- (3) Application for Review, filed 11/19/07, by Petitioners regarding *Order on Reconsideration*, DA 07-4345, and assignment of authorization application File Nos. 0002438737-39, 0002438741-42, 0002438744, 0002438746, 0002438749, 0002438759, 0002633764, 0002633769, 0002635143 (assignment from Maritel, Inc. and its subsidiaries (together “Maritel”) to Motorola) (the “Assignment ApRev”)
- (4) *Petition to Deny and Petition for Reconsideration*, submitted by Telesaurus VPC LLC et al. (Petitioners) on 7/18/08, re: transfer of control applications, File Nos. 0003463998, 0003470447, 0003470497, 0003470527, 0003470576, 0003470583, 0003470593, 0003470602, 0003470608, 0003470613 (the “Transfers Proceeding”)
- (5) *Petition to Deny*, submitted by Telesaurus VPC LLC et al. (Petitioners) on 8/27/08, re: *de facto* transfer lease applications, File Nos. 0003516654, 0003516656, 0003534598, 0003534602, 0003534763, 0003534766, 0003534767, 0003534768, 0003535087 (the “Leases Proceeding”)

((3), (4) and (5) together the “Maritel Proceedings”)

- (6) Reply Comments, Request to Deny Petition for Reconsideration and Request for Sanctions, filed by Telesaurus VPC LLC et al on 1/29/09 in WC Docket No. 06-122 and under File No. 0002303355, regarding a petition for reconsideration filed by MCLM of a Wireline Competition Bureau Order.
- (7) Reply Comments and Request to Deny Petition for Reconsideration, filed by Skybridge Spectrum Foundation on 1/29/09 in WC Docket No. 06-122 and under File No. 0002303355, regarding a petition for reconsideration filed by MCLM of a Wireline Competition Bureau Order.
- (8) Notice to Supplement or File New Petitions for Reconsideration Based on New Facts, filed by Petitioners on 9/25/08 under File No. 0002303355 et al.

((6), (7) and (8) together, the “WCB Proceedings”)

- (9) Application for Review: “In the Matter of Mobex Network Services, LLC to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Station in Various Locations in the United States; To Transfer Control of AMTS Licenses; To Assign AMTS Licenses”, filed by Petitioners, except THL, re: Order on Reconsideration, DA 07-148, re: File Nos. 0001370847, 0001370848, 0001370850, 0001600664, 0001768691, 0001885281, 0002197542
- (10) Petition for Reconsideration: “In the Matter of Mobex Network Services, LLC to Renew Licenses for Automated Maritime Telecommunications System (AMTS) Station in Various Locations in the United States; To Transfer Control of AMTS Licenses; To Assign AMTS Licenses” filed by THL re: Order on Reconsideration, DA 07-148, re: File Nos. 0001370847, 0001370848, 0001370850, 0001600664, 0001768691, 0001885281, 0002197542
- (11) Application for Review: “In the Matter of Renewal Applications of Mobex Network Services, LLC for Automated Maritime Telecommunications Systems”, of Order on Reconsideration, DA 05-2492, re: File Nos. 0001082495-0001082548
- (12) Petition for Reconsideration: “In the Matter of Renewal Applications of Mobex Network Services, LLC for Automated Maritime Telecommunications Systems” of Order on Reconsideration, DA 05-2492, re: File Nos. 0001082495-0001082548

- (13) Application for Review: “In the Matter of Mobex Network Services, LLC Applications to Modify AMTS Licenses” of *Order*, DA 07-294, re: File Nos. 0001438800, 0001439011
- (14) Petition for Reconsideration: “In the Matter of Mobex Network Services, LLC Applications for Renewal of AMTS Licenses; Application to Modify AMTS License of *Order*, DA 07-294, re: File Nos. 0002363519, 0002363520, 0002363521, 0001438800

((9) thru (14) together, the “Site-Based Proceedings”)

((1) thru (14) together, the “Related Proceedings”)

These Related Proceedings are relevant to the instant proceeding for the obvious reasons discussed in each and include, but are not limited to, the clear facts and arguments that MCLM and Donald DePriest (“DePriest”), its co-controller (and actual controller as shown by Petitioners’ in the Auction No. 61 Proceedings including by control of Communications Investments, Inc. per State of Mississippi records) lack the required character and fitness to be Commission licensees, including, but not limited to, that they have lacked candor, made misrepresentations, made false certifications and statements, failed to disclose affiliates, failed to disclose gross revenues for affiliates, failed to disclose ownership and control of affiliates and FCC regulated entities, sought a bidding credit MCLM was not entitled to receive, failed to disclose bidding agreements and other contractual relationships, etc. in the Auction No. 61 proceedings regarding MCLM’s participation in Auction No. 61 and its application (both Form 175 and Form 601). In addition, the purchase agreement between MCLM and BREC shows the relevance of the Related Proceedings since it cites to many of them as conditions—see Section 4.5(b) of the MCLM and BREC purchase agreement that lists many of the above proceedings.

The Supplement, noted above, is yet another example of DePriest’s failure to be truthful in FCC proceedings. It reveals among other things that DePriest has always misrepresented in the Auction No. 61 proceedings that he never controlled Maritel, which has been shown to be false in the Maritel Proceedings in which DePriest admits he does control Maritel.

The Supplement also provides evidence of other violations including further evidence of a relationship between MCLM and National Rural Telecommunications Cooperative, that also may have disqualified MCLM from any bidding credit if NRTC were ruled an affiliate—cited here since the deliberate rule violations cause lack of requisite character and fitness, and also are part of disqualification under 47 USC §313 and 314 with regard to anti-competitive actions, and one of Petitioners’ related standing arguments herein.

Exhibit 2 to the Transfers Proceeding, like the Supplement, is further evidence that Donald DePriest who in fact was the controlling interest in Maritel (as Petitioners stated in the Auction 61 proceedings regarding MCLM’s long form application, but to which Donald Depriest flatly and fraudulently denied: see the Supplement), and thus Maritel, were indeed affiliates of MCLM, as Petitioners asserted (with ample proof) in their challenged to the MCLM long form in Auction 61. Again, that is directly contrary to statements of Donald Depriest and MCLM regarding this challenge to the MCLM Auction 61 long form application, as noted in the Supplement and Related Proceedings.

The Auction No. 61 Proceedings, the Maritel Proceedings and the new facts shown here reveals MCLM misrepresentations of facts and lack of candor about its affiliates and their gross revenues that are relevant to the instant proceeding since the License in this Application was obtained in Auction No. 61 and it is now overwhelmingly obvious that MCLM should have been disqualified from Auction No. 61, that it should not hold the License and be able to assign any portion of it, and that two of Petitioners who bid on the License in Auction No. 61 have *Ashbacker* rights entitling one of them to the License since they had the only legitimate high bids.

The newly revealed facts given in the WCB Proceedings are relevant to the instant proceeding because MCLM’s misrepresentation of facts and lack of candor in Auction No. 61, in the AMTS service in general and the proceeding against the MCLM 601 are relevant

to this proceeding because they further show that MCLM does not have the character and fitness to be a Commission licensee. The WCB Proceedings reveal that MCLM has been misrepresenting that it is operating CMRS AMTS site-based stations (which must be operated as CMRS unless a waiver was granted, and it was not to MCLM or its predecessor Mobex) since MCLM itself argues that it and its predecessor-in-interest, Mobex, did and does not provide CMRS service but only PMRS service and thus should be entitled to a refund of its predecessors-in-interest's, Mobex and Watercom, USF fees including during a period of time, 2005-2006, when MCLM clearly had ownership of the Mobex licenses. However, at no point did MCLM tell the FCC during the subject years of the WCB Proceeding that it was operating as a PMRS provider (providing service to a very restricted group of users) with its CMRS AMTS licenses, and at no point did MCLM turn back in its AMTS site-based licenses for cancellation for failure to operate them as CMRS.

The facts in the WCB Proceedings clearly show fraud (or sustained repeated gross negligence at the very least that must be taken as fraud, as shown in case law) by MCLM in order to obtain a bidding credit it was not entitled to receive and to avoid Commission rules and disqualification from Auction No. 61 and to avoid cancellation of its site-based AMTS for failure to operate them as CMRS.

4. MCLM Admission in NJ Court Case that Mobex is a Predecessor-In-Interest and Part of MCLM

Exhibit 4 hereto contains the MCLM Rule 7.1 Disclosure Statement filed in Civil Action No. 08-CV-03094-KSH-PS in the United State District Court, District of New Jersey. This is damning new evidence: MCLM has been caught "red-handed" again misrepresenting its actual affiliates and attributable gross revenues. It, along with the WCB proceeding, WC Docket No. 06-122, reveal that MCLM knowingly misrepresented facts to the WTB and Commission in Auction No. 61 when MCLM stated in its Opposition to Petition to Deny (See Exhibit 2 hereto)

that Mobex was not a predecessor-in-interest and therefore its gross revenues were not attributable. Instead, in a Court of law and before the WCB, MCLM has finally admitted that Mobex was indeed a predecessor-in-interest to MCLM and in fact “merged” into MCLM (Petitioners have always maintained in the Auction No. 61 proceeding re: the MCLM 601 that Mobex, per FCC rules, was always to be considered a predecessor-in-interest and its gross revenues attributable regardless of this new additional evidence). As shown in WC Docket No. 06-122 and the WCB pending proceeding regarding *Order*, DA 08-971, released August 26, 2008, and in MCLM’s own Request for Review filed with the WCB (See Exhibit 3 hereto), Mobex paid USF fees from 2001-2006 (including during the relevant disclosable years for Auction No. 61—2002, 2003 and 2004) of \$1,301,230. This amount of USF fees signifies that MCLM had attributable gross revenues from Mobex that along with its other gross revenues from affiliates it knows would have prevented it from qualifying from any bidding credit in Auction No. 61 (the USF fees represent only a fraction of a company’s gross revenues, thus Mobex’s attributable gross revenues would have had to have been several millions of dollars per year, which MCLM knew would have kept it from any bidding credit and so it misrepresented the facts to the FCC). Therefore, MCLM committed fraud and false certifications by lying on its Form 175 and Form 601 in order to obtain the bidding credit for which it knew it never qualified. The Commission cannot overlook these fraudulent actions and must revoke MCLM’s FCC licenses, including the License (MCLM has always been represented by FCC legal counsel, its alleged owner is an attorney and its co-controller, Donald DePriest, is experienced as an owner and controller of other FCC licensees; therefore, they knew what they were doing by misrepresenting facts to the FCC).²

² In addition, these new facts mean that MCLM, even if it were not disqualified, would not have been entitled to a bidding credit at all and therefore it still owes the FCC for the bidding credit which it knew it should not receive and thus cannot proceed with the Application because it still has a non-tax debt owed to the FCC.

Per the Commission's *Character Policy Statement*, see Exhibit 1 hereto, which is fully referenced and incorporated herein, MCLM must be disqualified as an FCC licensee and its licenses revoked because per Commission precedents it lacks the character and fitness to be a Commission licensee including for the repeated and blatant misrepresentations noted herein and its continued lack of candor and other actions which have and continue to violate FCC rules.³

In fact, the years for which MCLM requested a refund included years 2005 and 2006, in which MCLM already had alleged to the WTB that it had bought all of the license assets of MCLM, which means that MCLM was already telling the FCC via the Mobex Form-499 and USF fees that it was operating Mobex and that Mobex was its affiliate. MCLM did not file its first Form 499-A, even though it has maintained Mobex's operating stations, until April 1, 2008 (3 years after it had obtained Mobex).⁴

³ The Commission has explained that "As we noted in the Character Policy Statement, we are authorized to treat even the most insignificant misrepresentations as serious." *Applications of PCS 2000, L.P.*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 1703 (1997) at ¶ 47. See also 47 C.F.R. § 1.17 (providing that no person, in any investigation or adjudicatory proceeding, shall "intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading"). In many cases, the Commission has disqualified companies from holding FCC authorizations. See, e.g., *Radio Carrollton*, Memorandum Opinion and Order, 69 F.C.C.2d 1139 (1978) at ¶¶ 11,17 ("Thorburn's testimony on this matter before the Commission evinces an unmistakable lack of candor bordering on deception, conduct the Commission cannot and will not tolerate. . . . Through this conduct, Faulkner has demonstrated that it does not possess the qualifications to be a licensee. Accordingly, we conclude that the public interest would not be served by a renewal of Faulkner's license.") The Commission has found that "[o]nce we find that we cannot rely on a licensee's representations to us, the only suitable penalty is revocation of the license." *Sea Island*, 60 F.C.C.2d at 157 (revoking license because the owner and officers of the licensee company made deliberate misrepresentations and other misleading and deceptive statements to the Commission in order to conceal improper financial practices); *RKO General, Inc.*, Decision, 78 F.C.C.2d 1 (1980), *aff'd*, 670 F.2d 215 (D.C. Cir. 1981) (denying an application based upon applicant's lack of candor in proceedings before the FCC).

⁴ Apparently, the WTB, after more than 3 years, failed to see that Mobex, completely owned by MCLM at the time, was still paying USF fees from 2005-2006, which would clearly indicate affiliation and thus gross revenues that should have been disclosed on the MCLM Form 601 for Auction No. 61. Thanks to Petitioners efforts in protecting the public interest and

This is not the first time that MCLM has misrepresented matters before the FCC. Petitioners have shown with facts throughout the Auction No. 61 proceedings (see all pleadings filed under the Form 601 application captioned above) concerning the MCLM Forms 175 and 601 that MCLM misrepresented its ownership, control, affiliates, gross revenues and business size for qualifying for bidding credits, etc. This proceeding continues to reveal a pattern of misrepresentation and lack of candor by MCLM (e.g. do whatever it takes) in order to get what it wants: get a bidding credit it was not qualified for, get licenses it should not have been allowed to bid for, conceal ownership, control and affiliates, get refunds of USF payments, etc., even if it means taking contrary positions before two different FCC bureaus (probably with the hope that one bureau will not talk with the other one).⁵

5. New Fact re: NRTC and MCLM Agreement,
and Apparent Impermissible Lien on License

Besides what Petitioners have already stated to the FCC in the above referenced and incorporated pleadings regarding MCLM's relationship with National Rural Telecommunications Cooperative ("NRTC") and failure to fully disclose it, the Application's redacted copy of the purchase agreement between MCLM and BREC at "Schedule 4.5(d) Encumbrances" indicates by listing NRTC as an "encumbrance" that there is indeed some type of agreement between NRTC and MCLM with regard to NRTC having rights to the MCLM AMTS licenses, including the License. The MCLM and BREC purchase agreement at page 3 defines "Encumbrance" as "means any lien, claim, charge, security interest, mortgage, pledge,

upholding the Commission's Rules, the WTB is now aware of these new facts and additional misrepresentations that MCLM has been making.

⁵ MCLM has made a mockery of the Commission's Rules. The FCC should now take action to make amends for any past oversights of MCLM misrepresentations by revoking the License, dismissing the Application, disqualifying MCLM as an FCC licensee, and awarding the License to the lawful and legitimate high bidder from Auction No. 61.

easement, right of first offer or first refusal, conditional sale or other title retention agreement, defect in title, covenant or other restriction of any kind”. And Section 6.4 of the same purchase agreement states, “...On or prior to the Closing Date, Seller shall take all actions necessary to obtain the release of all Encumbrances set forth on Schedule 4.5(d) and any other Encumbrance on the Partitioned License and shall provide Buyer with evidence reasonably acceptable to Buyer of such release (the “Encumbrances Releases”).”

As the Supplement noted, an NRTC Update (Exhibit 7 to Supplement) states at pages 4 and 5:

In addition, through an agreement NRTC has negotiated with MCLM LLC of Jeffersonville, IN, members also could configure systems on the adjacent 217-220 MHz band.

Just before the end of 2006, the Federal Communications Commission (FCC) granted MCLM regional licenses in the 217-220 MHz band for all parts of the United States except the Mountain region.⁶ (The company is continuing efforts to obtain a license for that region.) Earlier this month, the FCC issued call letters for those frequencies, clearing the way for NRTC offer access to members.

“This gives us a ton of channels for Tait deployment,” said Todd Ellis, NRTC’s manager, Wireless Systems. “We’re ready to move forward with channel leasing for this new spectrum, and have a member lease prepared. Average use fees will be \$50 per channel per site per month, with better pricing for more channels and longer leasing terms.”

In relation to the above new fact and as noted in Related Proceedings, MCLM and NRTC:

- (1) first disclosed a bidding agreement in their Form 175,
- (2) then denied an agreement (see e.g. MCLM’s “Response to Section 1.41 Request” filed 8/22/05 and the attached 8/18/05 Jack Harvey Declaration—see e.g. page 2, point 7 of the

⁶ That is a deliberately false and actionable statement by NRTC to engage in unfair competition in AMTS license based business. It is clear in FCC records which licenses were granted to MCLM in Auction 61 and which were not. MCLM was not granted not only the Mountain AMTS license in Auction 61, but also the Northeast, Southeast, Northwest, Hawaii, or Alaska AMTS licenses. Just as NRTC is hiding the truth here, it conspired with NRTC to hide the truth of its affiliation with MCLM in Auction 61. Further, its “continuing efforts” noted above is by actionable tortuous interference with one of Petitioners’ contract to acquire that license from Thomas Kurian which in fact was Closed and reported as consummated to the FCC. The FCC has unlawfully rejected, to date, said consummation.

declaration where Mr. Harvey states, "...the Proposed MOU was never executed by either NRTC or MCLM."),

- (3) then subsequently contradicted this denial and acknowledged a signed agreement, thus making Mr. Harvey's declaration clearly false and perjury, (see e.g. MCLM Opposition to Petition to Deny filed 11/18/05 at footnote 2: "NRTC and MC/LM entered into a memorandum of understanding for the possible lease of spectrum use to NRTC, an arrangement of vendor and vendee....The memorandum of understanding expired by its own terms without a final agreement during the course of the auction...." [an agreement cannot expire if it is not a signed agreement; otherwise it never existed in the first place]),
- (4) then at the Form 601 stage denied an agreement, did not disclose any on its Form 601 and did not even more fully describe the allegedly terminated prior existing agreement as required by Section 1.2107,
- (5) per the NRTC Update, NRTC is declaring and marketing under an agreement with MCLM to use its AMTS channels.
- (6) and now per the purchase agreement between MCLM and BREC, NRTC is noted as an "Encumbrance" in the contract.

It is not credible under any reasonable standard (for a petition to deny under 47 USC §309 standards for prima facie evidence sufficient to call into question the accuracy of Applicant essential statements, and of grant in the public interest) that MCLM had an agreement with NRTC that it knew was disclosable on the Form 175 and did in fact disclose, then later didn't have an agreement at all, and then did have an agreement, then didn't have an agreement, and then finally had an agreement once the Licenses were granted: the critical threshold stage was the Form 175: and the noted Agreement with NRTC, *that is in fact now being played out*, was then disclosed. From all the evidence, it must be concluded—at *minimum for purposes of a*

hearing under 47 USC §309(d) and (e)-- that MCLM and NRTC have always had an agreement and that they merely denied its existence (did not disclose and describe it) on the Form 601, contrary to prior statements in the Form 175 and pleadings, to avoid further scrutiny of the agreement by the FCC and Petitioners and to avoid attribution of NRTC's gross revenues and thus disqualification from any bidding credit at all, and from the entire action since any change in designated entity "size" (discount level) causes disqualification under clear FCC rules and Orders. Again, at minimum, this type of *prima facie* evidence along with that already presented in this proceeding requires a fact finding hearing.

As noted above, MCLM does have an agreement with NRTC shown in Exhibit 7. This agreement may disqualify MCLM from any bidding discount, and from the entire auction and high bids which would make the Application moot. However, it appears that MCLM and NRTC have not notified the FCC of this agreement or provided a copy of it to the FCC by uploading it to their Application or to their Licenses or supplied it via any other method to the FCC: it is thus presented here.⁷

"Schedule 4.5(d) Encumbrances" to the purchase agreement also lists Pinnacle Bank, N.A., Nashville, TN and Section 6.4 indicates that Pinnacle Bank has some sort of encumbrance or lien against the License that will be taken care of by MCLM at closing. Since the purchase agreement deals with the purchase of the License, it can only be assumed that MCLM has used the License and possibly all of its FCC licenses, as collateral for a loan. FCC rules do not allow an FCC licensee to use their licenses as collateral and have liens placed against them since they are merely a right and not a property of the licensee, but belong to the public. Thus, MCLM is violating FCC rules by permitting a lien/encumbrance against its FCC licenses. The FCC should

⁷ Petitioners note here that to the degree BREC is obtaining the spectrum subject of the Application via NRTC that it may be responsible in part for any continued rule violations for failure to disclose any material relationship between NRTC and MCLM that it is aware of.

investigate the matter, including via the required hearing, and request information from Pinnacle Bank. This is yet further evidence that MCLM lacks the character and fitness to be a Commission licensee.

6. Waiver Requests of Application

See Attachments 1 and 2 hereto: *these are referenced and fully incorporated herein*. In addition, Petitioner state the following:

In light of the facts, new and existing, that have been presented here, the Application should be dismissed, thus making the waiver requests moot. However, in case the Application is not dismissed, Petitioners make the following arguments as to why the following waiver requests in the Application should not be granted:

7. Hearing Required On Some Issues, But Disqualification Under Admitted Facts and Clear Rules Required

Petitioners hereby refer to Exhibit 6 of their filing (except for THL) “Supplement to Application for Review: Regarding New Facts” filed 7/9/08 regarding File No. 0002303355. That Exhibit 6 contains an article on the 5th Amendment to the Constitution. The 5th Amendment requires a hearing, according to US Supreme Court, in administrative proceedings, at least at some stage in the proceeding. In accord, 47 USC 309 requires a formal hearing if a petition to deny presents the called-for *prima facie* evidence. The Administrative Procedure Act also requires it. The new facts presented above, especially combined with facts in the Related Proceedings, are compellingly sufficient for said hearing.

However, the new facts presented here, especially combined with facts in the herein referenced and incorporated pleadings, also demonstrate that MCLM was, by rule, fully disqualified from Auction 61 bidding and resultant licenses including the License—with no hearing required. Thus, the Application should be dismissed as moot.

The clear applicable rules, applied to facts admitted to the FCC by MCLM and the Depriests—inescapably result in said disqualification. There is no FCC or Court precedent holding otherwise, but all applicable precedents (see Exhibit 1 for example and the Supreme Court’s decision noted herein) squarely support that disqualification conclusion.

For reasons given above, at minimum, a hearing must be held under 47 USC §309(d) and (e). The Commission cannot gut the Communication Act provisions for a hearing by skipping a hearing and trial and instead issuing via orders its decision on any facts presented in a petition to deny that were sufficient for a hearing, thereby eliminating a petitioner’s right to due process. Petitioners’ hereby request a hearing from the FCC on the instant matter.

8. MCLM Offering all its AMTS Spectrum for Sale Now

It should be noted now that MCLM has all of its AMTS spectrum listed for sale with Spectrum Bridge, Inc. (www.spectrumbridge.com) (also, see www.spectrumbridge.com/pdf/SpectrumBridge_MCLM-Release.pdf). First MCLM asserted in its application to acquire the Mobex site-based AMTS that it was a new operator that would continue AMTS service, and in acquiring AMTS in Auction No. 61 (by violating many FCC rules, as Petitioners have demonstrated in pending FCC challenge pleadings) MCLM further asserted that they were a bona fide operator of AMTS services. However, with no evidence in the public record at all of any actions by MCLM to operate the site-based stations acquired from their predecessors-in-interest or spectrum obtained in Auction No. 61, MCLM has instead listed all of the spectrum for sale. The sale is through an operation that suggests that a buyer can sign up online and secure spectrum, like a new invention. However, that process cannot avoid FCC rules and procedures for spectrum assignments. Apart from that inconsistency, that listing of all its AMTS spectrum for sale suggests the reason behind its request for refund in the WCB Proceedings. It simply wants to get out of the AMTS business, which according to public records it never operated in the first place (see e.g. failure to pay USF fees for all states it

operates in per its Forms 499-A, lack of State business registration and tax filings, etc. noted in Auction No. 61 Proceedings and other of the Related Proceedings), and recoup as much money as it can. Any actual AMTS operator, with the quantity of spectrum for years that it has asserted for years to the FCC is in legitimate operation, would have resulted in a greater income than it reported to the Universal Service Administrative Company. This new evidence is further indication that MCLM has not been operating CMRS AMTS stations as it has represented to the FCC for years and is further evidence of it warehousing spectrum, both of which are sufficient cause for a hearing and ultimately revocation of its licenses for failure to operate as CMRS according to the FCC's rules and for lacking candor and misrepresenting to the FCC its actual operations and intent.

9. Ashbacker Rights

As shown in the Auction No. 61 Proceedings, two of Petitioners have *Ashbacker* rights to the spectrum subject of the Assignment and they are making clear here that they have pending challenges to the License and that if successful at the Commission or Court, then as the only lawful high bidders they would be entitled to the License. In this regard, as previously argued to the FCC (with such arguments pending on appeal): Petitioners effectively submitted a competing application: the indeed submitted and accepted Form 175 and were the high qualified bidders for all the AMTS licenses awarded to MCLM in Auction 61 if the clear applicable rules on qualification / disqualification are applied based on the admitted and otherwise proven facts in the record. Thus, they have rights under the well know US Supreme Court case, *Ashbacker* pertaining to competition FCC license applications.

10. Sanctions Against MCLM's Counsel

MCLM's counsel, Dennis Brown, should be sanctioned in light of the new evidence since there is no way that he could not have been unaware of the new facts and existing facts regarding MCLM's history of misrepresentations of fact and lack of candor.

11. Conclusion

For the reasons given herein, the Application should be dismissed or denied and the License revoked and the other requests for relief herein granted.

At minimum, a hearing must be held under 47 USC Sections 309 (d) and (e) since Petitioner met the requirements of a Petition to Deny that call for such a hearing under those Statute sections.

Respectfully,

[Filed electronically. Signature on file.]

Warren Havens,
for Petitioners listed above

Each Petitioner:

2649 Benvenue Ave., Suites 2-6
Berkeley, CA 94704
Ph: 510-841-2220
Fx: 510-841-2226

Date: April 8, 2009

Exhibits

The Exhibits to the Petition to Deny are being filed separately in two parts via ULS.

Declaration

I, Warren C. Havens, as President of Petitioners, hereby declare, under penalty of perjury, that the foregoing Petition to Deny, including all Exhibits and Attachments, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

[Submitted Electronically. Signature on File.]

Warren C. Havens

Date: 8 April 2009

Certificate of Service

I, Warren C. Havens, certify that I have, on this 8th day of April 2009, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Petition to Deny, including Exhibits and Attachments, to the following:⁸

FCC Office of Inspector General
Federal Communications Commission
(via email only to: kent.nilsson@fcc.gov, jon.stover@fcc.gov)

Dennis Brown (legal counsel for MCLM and Mobex)
8124 Cooke Court, Suite 201
Manassas, VA 20109-7406
(Via mail and courtesy copy, not for purposes of service, via email to: d.c.brown@att.net)

Sandra DePriest and Donald DePriest
206 North 8th Street
Columbus, MS 39701

National Rural Telecommunications Cooperative
Attn: Jack Harvey
2121 Cooperative Way
Herndon, VA 20171
(Via mail and courtesy copy, not for purposes of service, via email to: jharvey@nrtc.org)

Big Rivers Electric Corporation
ATTN Randall Hooper
201 Third Street
Henderson, KY 42419

Hogan & Hartson LLP (counsel for BREC)
Joel S Winnik
555 Thirteenth Street, NW
Washington, DC 20004

[Filed Electronically. Signature on File]

Warren Havens

⁸ The mailed copy being placed into a USPS drop-box today will not be processed by the USPS until the next business day.

Exhibit 1: The following, fully referenced and incorporated in the petition to deny, is a memo regarding the Commission's *Character Policy Statement* and related precedents that call for MCLM's disqualification from Auction No. 61, revocation of its FCC licenses, and disqualification as an FCC licensee for lack of character and fitness due to clear misrepresentations of fact and lack of candor in violation of FCC rules and contrary to the public interest.

BULLETS ON FITNESS TO HOLD FCC LICENSES

- The Commission considers the character and fitness of parties seeking to become or remain FCC licensees to be of such importance that in 1985 it promulgated a *Character Policy Statement* so that applicants and licensees would be aware of the Commission's character and fitness requirements for holding FCC authorizations. *See Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 F.C.C. 2d 1179 (1985) ("*Character Policy Statement*").
 - Although the character standards were originally applied to broadcast licensees, the Commission has found that the standards "can provide guidance in the common carrier area as well," *MCI Telecommunications Corp.*, Order and Notice of Apparent Liability, 3 FCC Rcd 509, 515 n.14 (1998), and has routinely applied the standards to carriers holding Title III licenses, *e.g.*, *Southern New England Telecommunications Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21305 (1998).
- The primary focus of the Commission's character requirements has involved "FCC-related" behavior. In developing its character standards, the Commission "focused on specific traits which are predictive of an applicant's propensity to deal honestly with the Commission and comply with the Communications Act and the Commission's rules or policies." *Character Policy Statement*, 102 F.C.C. 2d at 1189.
- "Generally, breach of the duty to be truthful to the Commission takes two basic forms: (1) misrepresentation, and (2) lack of candor (failure to disclose). The former involves false statements of fact; the latter involves concealment, evasion, or other failure to be fully informative. Thus, an applicant's duty can be breached by affirmative misrepresentations and/or by a failure to come forward with a candid statement of relevant facts, whether or not such information is particularly elicited by the Commission." *Applications of Westel Samoa, Inc.*, Memorandum Opinion and Order, Hearing Designation Order, Notice of Opportunity for Hearing, and Order to Show Cause, 12 FCC Rcd. 14,057 (1997) at ¶ 38 ("*Westel*").
 - "Mr. Breen's failure to timely inform the Commission about material facts of which he was aware constitutes a breach of duty to the Commission and raises a substantial and material question of fact as to whether Mr. Breen lacked candor before the Commission. As the majority shareholder in Westel, Mr. Breen's misconduct calls into question whether Westel is qualified to be a Commission licensee. Accordingly, Westel's applications will be designated for a hearing in this consolidated proceeding." *Westel* at ¶ 48.

- In particular, the Commission has described the duty of licensee candor as “basic and well known.” *See Sea Island Broadcasting Corp. v. FCC*, 627 F.2d 240, 243 (D.C. Cir. 1980), *cert. denied*, 449 U.S. 834 (1980) (“*Sea Island*”).
 - The Commission has explained that “As we noted in the Character Policy Statement, we are authorized to treat even the most insignificant misrepresentations as serious.” *Applications of PCS 2000, L.P.*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 1703 (1997) at ¶ 47.
- *See also* 47 C.F.R. § 1.17 (providing that no person, in any investigation or adjudicatory proceeding, shall “intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading”).
- In many cases, the Commission has disqualified companies from holding FCC authorizations. *See, e.g., Radio Carrollton*, Memorandum Opinion and Order, 69 F.C.C.2d 1139 (1978) at ¶¶ 11,17 (“Thorburn’s testimony on this matter before the Commission evinces an unmistakable lack of candor bordering on deception, conduct the Commission cannot and will not tolerate. . . . Through this conduct, Faulkner has demonstrated that it does not possess the qualifications to be a licensee. Accordingly, we conclude that the public interest would not be served by a renewal of Faulkner’s license.”)
- The Commission has found that “[o]nce we find that we cannot rely on a licensee’s representations to us, the only suitable penalty is revocation of the license.” *Sea Island*, 60 F.C.C.2d at 157 (revoking license because the owner and officers of the licensee company made deliberate misrepresentations and other misleading and deceptive statements to the Commission in order to conceal improper financial practices); *RKO General, Inc.*, Decision, 78 F.C.C.2d 1 (1980), *aff’d*, 670 F.2d 215 (D.C. Cir. 1981) (denying an application based upon applicant’s lack of candor in proceedings before the FCC).
- In *Pass Word, Inc.*, a radio common carrier falsely certified to the FCC that it had completed its construction obligations (pursuant to a construction permit), in order to obtain a grant of its licenses. The FCC revoked Pass Word’s licenses:
 - “Among [the] documents are forms and letters filed with the Commission certifying the operative status of facilities for which construction permits had been issued. As detailed herein, the Commission finds that Pass Word and Bacon filed documents with the Commission in 1974 representing that construction of certain facilities had been completed in accordance with the term of the construction permit, and that equipment and service tests would begin shortly, when in fact the facilities were not ready for operation. The record establishes that equipment essential for operation of the facilities was not on hand when the representations were made, and that construction was completed and service commenced long after the expiration of the construction permits. Moreover, the record establishes that Bacon, individually and as the chief operating officer of Pass Word, concealed facts in correspondence, pleadings and forms filed over a three-year period regarding construction of the facilities and the Commission’s inquiry pertaining thereto. The facts establish that the concealment was deliberate and that Bacon deliberately made misrepresentations to the Commission.” *Pass*

Word, Inc., Order to Revoke Licenses, 76 F.C.C.2d 465 (1980) at ¶ 10, *aff'd*, *Pass Word, Inc. v. FCC*, 673 F.2d 1363 (D.C. Cir. 1982).

- “Section 312(a)(3) explicitly grants authority to the Commission to revoke a license for willful or repeated failure to operate substantially as set forth in the license. Had we been apprised that the 454 MHz channels had not been constructed and ready to operate by the expiration date of the construction permits and why, we would have been warranted in refusing to grant a license to cover those channels and in revoking the construction permit. Bacon did not in fact construct the channels in a timely manner and demonstrated no diligence in attempting to do so. Bacon willfully failed to construct and provide service and thus to operate as set forth in the licenses. It is important that a permittee, having received a valuable privilege, take immediate steps to construct the facilities that are to be dedicated to public service. A disregard for the construction period terms not only deprives the public of the service which has been represented as unfulfilled, but also ties up the frequency so another applicant is unable to meet the need. Thus, even if these had been no deliberate misrepresentation, revocation would have been appropriate in the factual situation described herein.” *Id.* at ¶ 122.
- The FCC rejected Pass Word’s request for a monetary forfeiture in lieu of revocation, stating “There is no question that revocation is an appropriate remedy under the Act where there has been a repeated pattern of deliberate misrepresentation and concealment to this Commission. Section 312(a)(1). *FCC v. WOKO, Inc.*, 329 U.S. 223 (1949). *Sea Island Broadcasting Corp.*, 60 F.C.C. 2d 146 (1976), *aff'd*, F. 2d, No. 76-1735 (D.C. Cir. Jan. 14, 1980). This same standard is applied to common carrier licensees. *The Telephone Co., et al.*, 65 F.C.C. 2d 605 (1977).” *Id.* at ¶ 121.
- The FCC has specifically disqualified licensees based on misleading renewal applications. *See RKO General, Inc.*, 78 FCC 2d 1, 98 (1980) (submissions to the Commission 'containing statements that are 'technically correct' but misleading as to the known facts' amount to lack of candor). In affirming the Commission's disqualification of the licensee in RKO solely on the grounds of lack of candor, the Court of Appeals stated:
 - “Section 1.65 of the Commission's Rules requires applicants to inform the Commission within thirty days whenever 'there has been a substantial change' regarding any matter that may be 'of decisional significance in a Commission proceeding involving the pending application.' This requires that an applicant inform the Commission 'of all facts, whether requested in [renewal] Form 303 or not, that may be of decisional significance so that the Commission can make a realistic decision based on all relevant factors.’” *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (1981) (internal citations omitted).

Exhibit 2: The following are the relevant pages from the MCLM Opposition to Petition to Deny its Form 601, File No. 0002303355, in which MCLM represented to the FCC that Mobex was not its predecessor-in-interest, which has now been contracted by MCLM's petition for refund and subsequent appeals in the Wireline Competition Bureau and Universal Service Administrative Company proceeding (see WC Docket No. 06-122 and the WCB pending proceeding regarding *Order*, DA 08-971, released August 26, 2008).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
MARITIME COMMUNICATIONS/)	
LAND MOBILE, LLC)	File No. 0002303355
)	Report No. AUC-61
)	(Auction No. 61)
Application for AMTS Licenses)	
AMT002, AMT004, AMT005, and AMT006)	

To: Marlene H. Dortch, Secretary
Attention: Chief, Wireless Telecommunications Bureau

OPPOSITION TO PETITION TO DENY

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Summary of the Filing

At all relevant times, Sandra M. DePriest has held one hundred percent control of Maritime Communications/Land Mobile (MC/LM). MC/LM has no affiliate relationship with Mobex; Paging Systems, Inc.; NRTC. MC/LM responds to all of the petitioners' allegations of affiliations between MC/LM and other entities. MC/LM explains why numerous allegations made by petitioners were irrelevant and immaterial to grant of MC/LM's application. The Commission should strike, dismiss, or deny the petitioners' petition and grant MC/LM's application at once.

had no effect on the conduct of the auction and was cured prior to the deadline for submitting down payments in Auction 61. Havens did not show that MC/LM is not legally qualified to receive grant of the licenses which it requests.

Mobex Network Services, LLC (Mobex) is not an affiliate of MC/LM. MC/LM has no ownership interest in or control of Mobex and Mobex has no ownership interest in or control of MC/LM. The relationship between Mobex and MC/LM is solely one of seller and buyer of assets, respectively. The Commission has granted its authority for MC/LM to take by assignment of authorization AMTS licenses held by Mobex, Order in Mobex Network Services, LLC, DA 05-2947 (WTB Released November 9, 2005). Therein, the Wireless Telecommunications Bureau made a final decision, disposing of all issues which Havens had raised against Mobex, including but not limited to, the validity of Mobex licenses, insofar as those issues might have concerned MC/LM. Because those matters are res judicata, the Commission should not entertain Havens's collateral attack on those issues and should dismiss or disregard Havens's new Section 7 in its entirety.

Paging Systems, Inc. (PSI) is not an affiliate of MC/LM. MC/LM is not an affiliate of PSI. There is no business relationship, whatsoever, between MC/LM and PSI. MC/LM had no agreement, whatsoever, with PSI concerning Auction 61. MC/LM did not collude in any way with PSI concerning bids or bidding in Auction 61.

Exhibit 3: The following is MCLM's Request for Review filed with the WCB asking for reconsideration of the Universal Service Administrative Company's denial of MCLM's request for refund of Mobex's and Watercom's USF fees paid from 2001-2006 because both companies are predecessors-in-interest to MCLM and MCLM has the authority and right to ask for a refund of their USF fees to MCLM. This completely contradicts the statements made to the FCC in Auction No. 61.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED

JAN - 9 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)
Request for Review by)
Waterway Communication System, LLC)
and)
Mobex Network Services, LLC)
of Decision of Universal Service Administrator)

FCC File No.
CC Docket No. 96-45

To: Marlene H. Dortch, Secretary
Attention: Chief, Wireline Competition Bureau

REQUEST FOR REVIEW

Maritime Communications/Land Mobile, LLC (MC/LM), by its attorney, hereby respectfully requests that the Commission review the action of the Universal Service Administrator (USAC) denying the demand of Waterway Communications System, LLC (Filer ID 808786, hereinafter, "Watercom") and Mobex Network Services, LLC (Filer ID 822896, hereinafter, "Mobex") (collectively, the "Payors", for refund of contributions to the Universal Service Fund (USF) made by the Payors. In support of its position, MC/LM shows the following.

Statement of Interest: The Payors provided Automated Maritime Telecommunications System service. Payors made contributions to the USF during the period 2001-2006 in the amount of \$1,301,230.00 and requested that USAC refund all contributions which they had made. MC/LM now holds the Automated Maritime Land Mobile System authorizations which had been held by the Payors and, for purposes of this proceeding is the successor in interest of Payors.

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ORIGINAL

Statement of Facts: The Payors were authorized by the Commission to provide Automated Maritime Telecommunications System (AMTS) service, a Maritime Service regulated under Part 80 of the Commission's Rules. Between 2001 and 2006, the Payors made contributions to the Universal Service Fund in the amount of \$1,301,230.00. On May 8, 2006, the Payors demanded refund of those monies from USAC. The Payors provided USAC with documentation demonstrating that they had paid to USAC the amount of money which they demanded be refunded. The Payors claimed that these contributions were not required by the FCC Rules and that Payors were improperly invoiced by USAC and thereby forced to pay contributions which were not required to be paid under the FCC Rules for the Universal Service contribution program. In a letter dated November 15, 2006 (copy attached hereto), USAC denied the Payors' claim.

Question Presented for Review: Were the Payors exempt from any duty to contribute to the USF?

Statement of Relief Sought: The Payors request that the Commission order USAC to refund \$1,301,230.00.

DISCUSSION

Towboat and Barge Operators are the Epitome of "Significantly Restricted Classes" of Users

At paragraph 786 of its Report and Order in CC Docket No. 96-45, 12 FCC Rcd 8776 (1997), the Commission determined not to impose Universal Service Fund contribution obligations on certain providers of telecommunications service. The Commission stated that it "agree[d] with

the Joint Board's recommendation that any entity that provides interstate telecommunications to users other than significantly restricted classes for a fee should contribute to the support mechanisms," 12 FCC Rcd at 9178. At footnote 2013 on page 9178, the Commission referred to its determination of those entities which provide service to significantly restricted classes of users.

At footnote 2013, the Commission referred to its Second Report and Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1439 (1994) (the CMRS 2d R&O). At paragraph 67 of the CMRS 2d R&O, the Commission explained that in applying the statutory language, it looked to several relevant factors, such as the type, nature and scope of users for whom a service is intended. The Commission explained specifically that

in the case of existing eligibility classifications under our Rules, service is not "effectively available to a substantial portion of the public" if it is provided exclusively for internal use or is offered only to a significantly restricted class of eligible users, as in the following services: (1) Public Safety Radio Services; (2) Special Emergency Radio Service; (3) Industrial Radio Services (except for Section 90.75, Business Radio Service); (4) Land Transportation Radio Services; (5) Radiolocation Services; (6) Maritime Service Stations; and (7) Aviation Service Stations,

id. Omitted footnotes after each Radio Service refer to specific Rule Sections. The footnote for Maritime Service Stations referred to 47 C.F.R. §80.15, which includes all Maritime Service Stations, including Public Coast stations of which Automated Maritime Telecommunication System stations are a species.

There are two broad categories of entities which are required to contribute to the USF, namely, mandatory contributors and permissive contributors. The Commission determined that certain entities are in the category of mandatory contributor, see, 12 FCC Rcd 8776, 9170, para. 775; and that certain other entities are in the category of permissive contributor, see, *id.* at 9182,

para. 793.

The Commission explained that Section 254(d) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. §254(d),

mandates that "every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." The statute defines the term "telecommunications carrier" as "any provider of telecommunications services," and the term "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used,"

12 FCC Rcd 8776, 9171 (1997) (First Universal Service Order).

Section 332(d)(1) of the Act defines "commercial mobile radio service" (CMRS) as "any mobile service (as defined in section 3) that is provided for profit and makes interconnected service available to (A) the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public," 47 U.S.C. §332(d).

Argument

The Payors are neither in the class of mandatory contributor nor in the class of permissive contributor because they did not provide service to the public or to such a class of eligible user as to be effectively available to a substantial portion of the public. The class of eligible users to which AMTS service can be provided is significantly restricted. Towboat and barge operators are not the general public, nor are they a substantial portion of the public. It takes millions of dollars and specific pilot authorizations to obtain and pilot a towboat or to own and operate a barge on the nation's inland waterways. MC/LM can think of no better example of a restricted class of user than American Commercial Barge Line, LLC, which was the Payors' largest

customer and which operated towboats under rigorous practical and regulatory requirements far beyond the scope which the general public must meet. To win acceptance of their AMTS service, it was necessary for the Payors to design and have manufactured a special ship station end user unit which could withstand harsh marine conditions, including constant moisture and exposure to corrosive salt water in coastal areas, and which was rugged enough not to be disabled by the intense vibration from the towboats large marine engines. The 220 MHz duplexer components, alone, were so large and heavy that they made the ship station unit impractical for use by the general public. The AMTS service was limited in scope, therefore, to a handful of eligible entities as it related to their operation of large vessels in the constantly changing rivers of the Mississippi, Illinois, Ohio and other river systems. Nothing about AMTS changed between the time of the CMRS 2d R&O and the time of the First Universal Service Order. Nothing in the First Universal Service Order overruled, reversed, or altered in any way the Commission's determination that Maritime Service "is offered only to a significantly restricted class of eligible users," CMRS 2d R&O.

There are many and varied bases for the Commission's determination that AMTS systems are not required to contribute to the USF. At the times that the Payors obtained their AMTS licenses, the Commission's Rules narrowly limited the geographic areas within which service could be provided. Section 80.475(a) of the Commission's Rules required that

AMTS applicants proposing to serve inland waterways must show how the proposed system will provide continuity of service to along more than 60% of each one or more navigable inland waterways. Inland waterways of less than 240 kilometers (150 miles) must be served in their entirety. AMTS applicants proposing to serve portions of the

Atlantic, Pacific, or Gulf of Mexico coastline must define a substantial area and show how the proposed system will provide continuity of service for it, 47 C.F.R. §80.475(a) (2001).¹

In many instances, the Commission has refused to permit an AMTS applicant to obtain an authorization for service because the proposed service area did not meet the Commission's narrow requirements. Those actions significantly restricted the class of eligible user.

In Fred Daniel d/b/a Orion Telecom (Orion), the Commission determined that not only could an AMTS system not be authorized for coverage over only land but that many eligible persons in communities, including Denver, Colorado; Henderson, Nevada; Yuma, Phoenix, and Tucson, Arizona; and El Paso, Ft. Worth, and Dallas, Texas could not obtain AMTS service because only one coast station would have been required for each community, 14 FCC Rcd 19912 (1999). The Commission also indicated in Orion that its original intent in allocating spectrum to AMTS was to allow a system to serve only the Mississippi River and the Gulf Intracoastal Waterway. In Warren Havens, 16 FCC Rcd 2539 (WTB 2001), the Commission's restrictive Rules prevented an AMTS applicant from providing AMTS service to eligible persons in Dallas, Austin, and San Antonio, Texas.

Not only did the Commission's Rules during the relevant timeframe restrict service to certain maritime areas, the Rules further limited AMTS coast stations to sites at which interference will not be caused to Television stations on certain channels, 47 C.F.R. §80.475(a)(1) (2001). To protect a TV station, the Commission refused to permit the location of an AMTS coast station in Atlanta, among other areas, Regionet Wireless License, LLC, 16 FCC Rcd 2534

¹ The Commission has granted licenses for AMTS service on a geographic area basis but the Payors did not hold such authorizations.

(WTB 2001), thereby restricting the class of eligible end users.

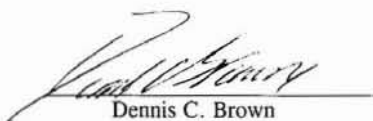
The Commission's Rules significantly restricted the class of eligible end users on land. Section 80.123(b) of the Rules provided that an AMTS system "must afford priority to marine-originating communications," 47 C.F.R. §80.123(b), thereby limiting the class of land users who could be served to those were able and willing to accept a second, lower priority of service. The Commission further restricted the class of eligible end users by requiring that "land stations may communicate only with public coast stations," 47 C.F.R. §80.123(f). Consequently, AMTS systems are restricted from providing service to eligible users which require communications between mobile units, rather than communication with or through a coast station.

The Commission's Rules limited an AMTS system to providing service to only a significantly restricted class of eligible end users. These restrictions precluded an AMTS system from providing service to a substantial portion of the public. Accordingly, AMTS systems were excluded from any requirement to contribute to USF.

CONCLUSION

For all the foregoing reasons, the Payors were exempt from any duty to contribute to the USF. The Commission should order USAC to refund to MC/LM the sum of \$1,301,230.00.

Respectfully submitted,
MARITIME COMMUNICATIONS/
LAND MOBILE, LLC



Dennis C. Brown

8124 Cooke Court, Suite 201
Manassas, Virginia 20109-7406
703/365-9436

Dated: January 9, 2007



Universal Service Administrative Company

CONTAINS CONFIDENTIAL INFORMATION

Administrator's Decision

November 15, 2006

VIA CERTIFIED MAIL

Dennis C. Brown
Attorney at Law
8124 Cooke Court, Suite 201
Manassas, VA 20109

Re: Waterway Communications System, LLC (Filer ID 808786) and Mobex Network Services, LLC (Filer ID 822896)

Dear Mr. Brown:

The Universal Service Administrative Company ("USAC") has completed an evaluation of the demand for refund submitted by you, dated May 8, 2006, on behalf of Waterway Communications System, LLC ("Watercom") and Mobex Network Services, LLC ("Mobex"). USAC also reviewed the supplemental information provided by John Readron, President, MCM LLC, on August 14, 2006 in response to USAC's request of June 30, 2006. In the May 8, 2006 letter, you requested that USAC refund payments made by Watercom and/or Mobex (collectively, "Mobex") to USAC for contributions to the Universal Service Fund (USF) in the amount of \$1,301,230.00.

With regard to the requested refund, as further explained below, USAC does not agree that Federal Communications Commission (FCC or Commission) rules and regulations support the request.

Summary and Background

On March 20, 2001, Watercom sent a letter to USAC regarding the sale of Watercom from American Commercial Lines to Mobex Network Services, LLC. Watercom's Filer ID (808786) continued to be the Filer ID under which FCC Form 499 filings were submitted by the entity. USAC continued to bill Watercom's Filer ID for USF contributions based on the revenue reported on the FCC Form 499s filed by Watercom under the new Mobex management. On June 17, 2003, in response to USAC outreach

regarding missing FCC Form 499s, Mobex notified USAC that Watercom and Regionet Wireless Operations, L.L.C (Filer ID 818032) should be consolidated into a single Filer ID for Mobex. USAC processed this request, creating new Filer ID 822896 for the consolidated entity. Watercom was billed through June 2003 at which point, any further billings were applied to the consolidated 822896 Mobex Filer ID. Mobex was billed by USAC beginning in July 2003 through September 2005. FCC Form 499-Q worksheets submitted by Mobex since that time have resulted in a *de minimis* status (annual contributions expected to be less than \$10,000), for which no billings have been generated.¹ However, in the absence of a filed August 2006 FCC Form 499-Q, USAC generated an estimate equal to one-fourth of the revenue reported on the company's 2006 FCC Form 499-A, which resulted in a non-*de minimis* status for the company. Billings are being applied in October, November and December 2006.

USAC records show no point at which annual revenue was estimated in lieu of an actual FCC Form 499 filing by Mobex/Watercom. There have been four occasions upon which quarterly revenue was estimated by USAC, due to the company's failure to file, using information from Mobex's previously filed FCC Form 499-A. Because estimates are based on the company's actual Form 499-A filings, all USF assessments have been billed to Mobex/Watercom using officer-certified data provided by the company.

On May 8, 2006, USAC received the refund demand letter referenced above for the periods 2001-2004. In that letter, you allege the CMRS services provided by Watercom and Mobex for this period were exempt from USF contribution obligations because the FCC specifically exempted CMRS providers in the *First Universal Service Order*.² USAC responded on June 30, 2006, requesting additional information and support regarding the services provided by Mobex, which Mobex provided on August 14, 2006.

Analysis and Discussion

Mobex's Claim Is Not Supported by FCC Rules and Regulations

Mobex's claim that neither it nor Watercom, as successive providers of maritime radio service, are or have ever been liable for contributions to the federal Universal Service Fund is not supported by FCC rules and regulations.

¹ See 47 C.F.R. § 54.708 ("If a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year....")

² *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*First Universal Service Order*).

In support of its claim Mobex argues the Commission, in the *First Universal Service Order*:

agree[d] with the Joint Board's recommendation that any entity that provides interstate telecommunications to users other than significantly restricted classes [of users][fn] for a fee should contribute to the support mechanisms.

[fn] The *CMRS 2nd R&O* stated that significantly restricted classes included, for example, maritime use only and public safety use only. *Implementation of Sections 3(n) and 332 of the Communications Act*, Second Report and Order, FCC 94-31, 9 FCC Red 1411, 1439 (1994) (*CMRS 2nd R&O*). See *infra* section XIII.C.³

Mobex/Watercom then refers to the *CMRS 2nd R&O* citation, which provides in relevant part:

[I]n the case of existing eligibility classifications under our Rules, service is not "effectively available to a substantial portion of the public" if it is provided exclusively for internal use or is offered only to a significantly restricted class of eligible users, as in the following services: (1) Public Safety Radio Services; (2) Special Emergency Radio Service; (3) Industrial Radio Services . . . (6) *Maritime Service Stations*; and (7) Aviation Service Stations. Service among these Part 90 eligibility groups, or to internal users, is made available on only a limited basis to insubstantial portions of the public. We conclude that it was Congress's intent that making service available to, or among, the eligible users in the above-stated private mobile radio services does not constitute service that is "effectively available to a substantial portion of the public."⁴

Mobex/Watercom takes the language cited above to stand for the proposition that, as a provider of services that are not "effectively available to a substantial portion of the public," maritime radio service providers such as Mobex/Watercom are not subject to a USF contribution obligations. However, the *First Universal Service Order* citation provided by Mobex/Watercom stands only for the proposition that providers of interstate telecom *other than to significantly restricted classes, i.e., common carriers*, "should" contribute to the USF.⁵ The cited language says nothing about the obligations of providers of interstate telecom to restricted classes. And, while the further citation by Mobex/Watercom appears to establish maritime radio service is *not* "effectively available to a substantial portion of the public," this does not answer the question of whether maritime radio service is exempt from the USF contribution obligations.

³ *First Universal Service Order*, 12 FCC Red at 9178, ¶ 786 *First Universal Service Order*.

⁴ *CMRS 2nd R&O*, 9 FCC Red 1411, 1439, ¶ 67 (footnotes omitted; emphasis added).

⁵ See *supra* n.3.

Closer examination of the *First Universal Service Order* reveals the language cited by Mobex/Watercom is taken out of context. In full, the cited language reads:

In light of the legislative history and precedent discussed above, we conclude that *only common carriers should be considered mandatory contributors* to the support mechanisms. We agree with the Joint Board's recommendation that any entity that provides interstate telecommunications to users other than significantly restricted classes for a fee should contribute to the support mechanisms. . . .⁶

This language represents the Commission's agreement with the Joint Board's recommendation, pursuant to the 1996 Telecommunications Act's (the *1996 Act*) provisions governing universal service contributions, that common carriers must be considered mandatory contributors.⁷ Section 254(d) of the *1996 Act* specifically provides (emphasis added):

Every telecommunications carrier that provides interstate telecommunications services *shall contribute*, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. . . . Any other provider of interstate telecommunications *may be required to contribute* to the preservation and advancement of universal service if the public interest so requires.⁸

Congress thus provided that interstate telecom "carriers" (i.e., common carriers) *shall* contribute to the USF. Congress then gave the Commission discretion to require "any other provider of interstate telecommunications" to contribute to the USF "if the public interest so requires."⁹ In implementing this language, the first question the Commission addressed was who must ("shall") contribute to the fund and the answer was common carriers. The Commission's discussion of this question is the language cited by Mobex/Watercom. Indeed this language appears under the section of the *First Universal Service Order* entitled "**B. Mandatory Contributors to the [USF] Support Mechanisms.**"¹⁰

In a subsequent section of the *First Universal Service Order* entitled "**C. Other Providers of Interstate Telecommunications,**" the Commission engages in a public interest analysis to support the Commission's determination of who, other than common carriers, should contribute to the USF.¹¹

⁶ *Id.*

⁷ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat 56 (*1996 Act*), amended the Communications Act of 1934.

⁸ *Id.*

⁹ *Id.*

¹⁰ *First Universal Service Order*, 12 FCC Rcd at 9170, ¶ 775.

¹¹ *First Universal Service Order*, 12 FCC Rcd at 9181, ¶ 793.

Before addressing this point, however, the Commission, in determining who else should contribute to the USF, explained it was "requir[ing] all the entities identified by the Joint Board in its Recommended Decision to contribute to the support mechanisms, subject to the slight modification discussed above regarding carriers that provide only international services."¹² Thus, we can simply look at the Joint Board's recommendation to determine its intent. The Joint Board specifically addressed arguments put forth by commenters that CMRS providers (which would include maritime radio service providers such as Mobex) should be exempt from a contribution obligation. In declining to recommend such an exemption, the Joint Board explained:

We recommend that [the definition of] "interstate telecommunications" [be construed broadly for purposes of identifying mandatory contributors and] include, but [not be] limited to, the interstate portion of the following:
cellular telephone and paging, *mobile radio* [i.e., CMRS], operator services, PCS, access (including SLCs), alternative access and special access, packet switched, WATS, toll-free, 900, MTS, private line, telex, telegraph, video, satellite, international/foreign, intraLATA, and resale services.¹³

The Joint Board went on to explicitly recommend:

We find no reason to exempt from contribution *CMRS*, satellite operators, resellers, paging companies, utility companies or carriers that serve rural or high cost areas that provide interstate telecommunications services, because the 1996 Act requires "every telecommunications carrier that provides interstate telecommunications services" to contribute to support mechanisms. Thus, to the extent that these entities are considered "telecommunications carriers" providing "interstate telecommunications services," they must contribute to universal service support mechanisms.¹⁴

The Commission's statement "requir[ing] all the entities identified by the Joint Board in its Recommended Decision to contribute [to the USF]" includes CMRS carriers such as maritime radio services. The only thing the Commission did differently was determine that such providers were not "mandatory" contributors but rather required an exercise of the Commission's "permissive" authority supported by a public interest analysis. As the Commission explained:

... Therefore, we find that the public interest requires ... private service providers that offer interstate telecommunications to others for a fee ... to

¹² *First Universal Service Order*, 12 FCC Rcd at 9181, ¶ 794.

¹³ Joint Board Recommended Decision, ¶¶ 783-85 (emphasis added).

¹⁴ Joint Board Recommended Decision, ¶ 787.

contribute to the preservation and advancement of universal service in the same manner as carriers that provide "interstate telecommunications services" because this approach reduces the possibility that carriers with universal service obligations will compete directly with carriers without such obligations. In addition, the inclusion of such providers as contributors to the support mechanisms will broaden the funding base, lessening contribution requirements on telecommunications carriers or any particular class of telecommunications providers.

Although some private service providers serve only their own internal needs, some provide services or lease excess capacity on a private contractual basis. The provision of services or the lease of excess capacity on a private contractual basis alone does not render these private service providers common carriers and thus mandatory contributors. We find justification, however, pursuant to our permissive authority, for requiring these providers that provide telecommunications to others in addition to serving their internal needs to contribute to federal universal service on the same basis as telecommunications carriers. Without the benefit of access to the PSTN, which is supported by universal service mechanisms, these providers would be unable to sell their services to others for a fee. Accordingly, these providers, like telecommunications or common carriers, have built their businesses or a part of their businesses on access to the PSTN; provide telecommunications in competition with common carriers, and their non-common carrier status results solely from the manner in which they have chosen to structure their operations. Even if a private network operator is not connected to the PSTN, if it provides telecommunications, it competes with common carriers, and the principle of competitive neutrality dictates that we should secure contributions from it as well as its competitors. Thus, pursuant to our permissive authority, we find that the public interest requires private service providers that offer services to others for a fee on a non-common carrier basis to contribute to the support mechanisms. . . .¹⁵

Lastly, the Commission in the *First Universal Service Order* did create some explicit exemptions. These include "self providers" such as companies that self provision telecom, government entities that purchase services in bulk for themselves, and, significantly, public safety and local governmental entities—e.g., CMRS providers such as police, medical, fire, and rescue dispatch services covered under Part 90 of the Commission rules.¹⁶ Maritime CMRS is provided under Part 80 of the Commission rules, and therefore, is not part of this public safety CMRS exemption. Thus, where the Commission established USF exemptions, they were explicit and did not include Maritime Radio Service.

¹⁵ *First Universal Service Order*, ¶¶ 795-96.

¹⁶ *First Universal Service Order*, ¶ 800.

Dennis C. Brown
November 15, 2006
Page 7

Mobex/Watercom's entire argument is it offers a service-maritime radio service-that is not available to the public (i.e., Mobex/Watercom is a "private service provider"). The language above shows, however, that merely providing interstate telecommunications requires a company to contribute to the USF. It is not dependent on whether that company provides telecommunications on a private contractual basis or as a service to the public.

In conclusion, the language cited by Mobex/Watercom does not support its claim that, as an exclusive provider of maritime radio service -- a private, non-common carrier CMRS service -- Mobex/Watercom is exempt from the USF contribution obligation.

For the foregoing reasons, USAC hereby denies Mobex's request for a refund in the amount of \$1,301,230.00 for the periods 2001-2004.

This letter serves as the decision of the USF Administrator. Should Mobex wish to seek further relief, it may wish to file an appeal with the FCC. Information regarding waivers and appeals may be found in the FCC rules¹⁷ and at: <http://www.universalservice.org/fund-administration/contributors/file-appeal/>.

Sincerely,

/s/ WB Erwin, Vice President of Finance

Universal Service Administrative Company

Enclosure

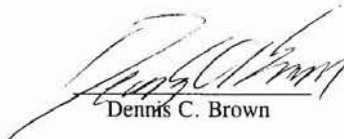
cc: Greg Reardon, President, MCLM, LLC
Regina Dorsey, FCC Office of Managing Director
Hillary DeNigro, FCC Enforcement Bureau
Greg Guice, FCC Wireline Competition Bureau
Trent Harkrader, FCC Enforcement Bureau

¹⁷ 47 C.F.R. §§ 54.719-725.

Certificate of Service

I hereby certify that on this ninth day of January, 2007, I served a copy of the foregoing Request for Review on the following person by placing a copy in the United States Mail, first-class postage prepaid:

W.B. Erwin, Director of Finance
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036



Dennis C. Brown

Exhibit 4: MCLM Rule 7.1 Disclosure Statement in Civil Action No. 08-CV-03094-KSH-PS, Skybridge Spectrum Foundation et al. v. Mobex Network Services LLC et al, United States District Court, District of New Jersey, in which MCLM admits that Mobex was fully merged into MCLM. This contradicts what MCLM told the FCC in Auction No. 61, that Mobex was not a predecessor-in-interest, to avoid disclosing Mobex's attributable gross revenues that would have disqualified MCLM from any bidding credit and disqualified it from the auction in which it obtained the spectrum subject of the Assignment. The below reveals (1) MCLM's lack of candor for failing to disclose this years ago and (2) misrepresentation for intentionally misstating facts to the Commission that MCLM knew not to be true at the time in order to gain a competitive advantage and not be disqualified from Auction No. 61.

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Mobex Network Services, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SKYBRIDGE SPECTRUM FOUNDATION, a
Delaware nonprofit corporation; WARREN C.
HAVENS, an individual; TELESARUS VPC,
LLC, a Delaware Limited Liability Company;
AMTS CONSORTIUM, LLC, a Delaware Limited
Liability Company; INTELLIGENT
TRANSPORTATION & MONITORING, LLC, a
Delaware Limited Liability Company; and
TELESARUS HOLDINGS GB, LLC, a Delaware
Limited Liability Company,

Plaintiffs,

v.

MOBEX NETWORK SERVICES, LLC, a
Delaware Limited Liability Company; MARITIME
COMMUNICATIONS/LAND MOBILE, LLC, a
Delaware Limited Liability Company, PAGING
SYSTEMS, INC., a California corporation;
TOUCH TEL CORPORATION, a California
corporation, and DOES 1-100,

Defendants.

Civil Action No. 08-CV-03094-KSH-PS

RULE 7.1
DISCLOSURE STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1 and to enable District Judges and
Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned
counsel identifies that Maritime Communications/Land Mobile, LLC ("MCLM") is a privately-

held company and there are no parent companies and/or publicly held corporations owning any of its stock and Mobex Network Services, LLC was merged into MCLM and no longer has a separate corporate existence from MCLM.

By: /s/ Robert W. Mauriello, Jr.
Robert W. Mauriello, Jr.
GRAHAM CURTIN, P.A.

Attorneys for Defendants
Maritime Communications/Land
Mobile, LLC and Mobex Network
Services, LLC

Dated: December 17, 2008

Exhibit 5: Mobex UCC filing showing that many of its site-based stations only had “License Holders” which is indication of warehousing, token construction and supports the MCLM statements to WCB and the Universal Service Administrative Company in the WCB Proceedings that it is not providing CMRS with its AMTS licenses. This evidence supports Petitioners’ arguments that MCLM does not have the character and fitness to be a Commission licensee.

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (2a or 1b) - do not abbreviate or combine names				
1a. ORGANIZATION'S NAME Mobex Network Services, LLC				
OR 1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 453 East Park Place		CITY Jeffersonville	STATE IN	POSTAL CODE 47130-4735
1d. ASSIGNATIONS ADDL INFO RE ORGANIZATION DEBTOR		1e. TYPE OF ORGANIZATION Ltd. Liability Co.	1f. JURISDICTION OF ORGANIZATION Delaware	1g. ORGANIZATIONAL ID #, if any 2967800
<input type="checkbox"/> NONE				
2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only <u>one</u> debtor name (2a or 2b) - do not abbreviate or combine names				
2a. ORGANIZATION'S NAME				
OR 2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. ASSIGNATIONS ADDL INFO RE ORGANIZATION DEBTOR		2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				<input type="checkbox"/> NONE
3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR SUP) - insert only <u>one</u> secured party name (3a or 3b)				
3a. ORGANIZATION'S NAME Eriesson Inc.				
OR 3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 6300 Legacy Drive		CITY Plano	STATE TX	POSTAL CODE 75024
				COUNTRY USA

All authorizations, permits and Licenses, as well as proceeds from the sale of such, described in Exhibit A, attached hereto and incorporated herein by reference.

5. ALTERNATIVE DESIGNATION (if applicable)		LESSOR/LESSOR	CONVEYOR/CONVEYOR	BAILEY/BAILEY	SELLER/BUYER	AD. LIEN	NON-UCC FILING
6. This FILING/NOTICE STATEMENT is to be filed (or record) (or recorded) in the REAL ESTATE RECORDS of the State of		7. Check if REQUEST SEARCH REPORT (30 or 60 days) (optional)		<input checked="" type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2			
8. OPTIONAL FILER REFERENCE DATA							
106448.128 [Filing Jurisdiction: Delaware Secretary of State]							

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

International Association of Commercial Administrators (IACA)

EXHIBIT A

[Licenses]

Index AMTS Licenses

Location	State	Call Sign	Exp. Date	LAT	LONG	Antenna H to Top (ft)	ERP	AMTS Block	Reason	Revenue Generating
Phoenix	OR	KAER88-12	08/07/2014	42.17-64	122-44-59	131	1500	A	MPT-1327 - NW	N
Portland	OR	KAER88-13	08/07/2014	45-28-20	122-41-40	485	1000	A	MPT-1327 - NW	N
Corona	CA	KAER88-14	08/07/2014	33-42-38	117-52-01	70	1000	A	MPT-1327 - NW	N
Orange Island	WA	KAER88-20	08/07/2014	48-48-45	122-59-31	400	1000	A	MPT-1327 - NW	N
Escondido	CA	KAER88-22	08/07/2014	44-11-41	122-58-08	107	1000	A	MPT-1327 - NW	N
Salinas	CA	KAER88-26	08/07/2014	36-32-05	121-37-08	150	1000	A	MPT-1327 - NW	N
San Rafael	CA	KAER88-27	08/07/2014	37-55-44	122-35-11	60	1000	A	MPT-1327 - NW	N
Walrus Creek	CA	KAER88-28	08/07/2014	37-52-54	121-55-05	200	1000	A	MPT-1327 - NW	N
Carmen	WA	KAER88-29	08/07/2014	45-30-33	122-32-33	170	1000	A	MPT-1327 - NW	N
Bremerton	WA	KAER88-30	08/07/2014	47-32-51	122-46-59	120	1000	A	MPT-1327 - NW	N
Les Galois	CA	KAER88-32	08/07/2014	37-06-39	121-45-31	180	1000	A	MPT-1327 - NW	N
Orlando	WA	KAER88-34	08/07/2014	45-56-42	122-08-11	85	1000	A	MPT-1327 - NW	N
McClellan	CA	KAER88-37	08/07/2014	37-50-31	121-52-35	60	1000	A	MPT-1327 - NW	N
Crabtree	WA	KAER88-38	08/07/2014	38-18-14	120-54-07	120	1000	A	MPT-1327 - NW	N
Rehner	WA	KAER88-40	08/07/2014	45-52-18	122-56-05	80	1000	A	MPT-1327 - NW	N
Pine Valley	CA	KAER88-44	08/07/2014	34-32-50	118-24-54	50	1000	A	MPT-1327 - NW	N
Petaluma	CA	KAER88-45	08/07/2014	45-07-52	122-17-28	120	1000	A	MPT-1327 - NW	N
Woodburn	WA	KAER88-48	08/07/2014	47-50-14	121-58-32	180	1000	A	MPT-1327 - NW	N
Seattle	OR	KAER88-49	08/07/2014	44-50-48	122-07-20	90	1000	A	MPT-1327 - NW	N
Blumenfeld	CA	KAER88-53	08/07/2014	38-55-47	118-44-56	190	1000	A	MPT-1327 - NW	N
Charmack	MI	KCE276-1	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Logan City	MI	KCE276-2	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-3	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette City	MI	KCE276-4	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-5	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-6	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-7	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-8	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-9	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-10	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-11	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-12	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
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Marquette	MI	KCE276-18	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-19	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-20	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-21	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-22	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-23	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-24	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-25	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-26	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-27	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
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Marquette	MI	KCE276-29	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
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Marquette	MI	KCE276-34	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-35	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
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Marquette	MI	KCE276-37	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-38	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-39	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-40	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-41	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
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Marquette	MI	KCE276-43	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-44	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-45	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-46	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-47	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-48	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-49	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-50	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-51	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-52	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-53	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-54	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-55	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-56	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-57	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-58	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-59	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-60	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-61	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-62	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-63	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-64	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-65	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-66	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-67	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-68	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-69	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-70	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-71	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-72	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-73	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-74	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-75	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-76	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-77	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-78	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-79	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-80	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-81	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-82	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-83	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-84	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-85	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-86	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-87	07/14/2013	41-38-45	84-36-15	190	1000	A	MPT-1327 - NW	N
Marquette	MI	KCE276-88								

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Modern AMTS Licenses

Texas City	TX	WHG708	12/10/2012	26-28-01	095-00-03	240	1000	AAB	Watercom	Y
Sanger	TX	WHG709	12/10/2012	26-28-01	095-00-03	240	1000	AAB	Watercom	Y
Corpus Christi	TX	WHG710	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Bailey Bay	TX	WHG711	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
New Orleans	LA	WHG712	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG713	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG714	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG715	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG716	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG717	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG718	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG719	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG720	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG721	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG722	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG723	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG724	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG725	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG726	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG727	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG728	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG729	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG730	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG731	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG732	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG733	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG734	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG735	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG736	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG737	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG738	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG739	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG740	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG741	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG742	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG743	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG744	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG745	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG746	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG747	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG748	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG749	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG750	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG751	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y
Beaumont	TX	WHG752	12/10/2012	27-28-38	097-01-54	279	1000	AAB	Watercom	Y

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Mojoer AMTS Licenses

TX	WH0753	12/10/2012	28-33-09	066-36-31	265	1000	AAB	Watson	Y
TX	WH0754	12/10/2012	28-33-09	067-38-40	350	1000	AAB	Watson	N
NC	WRV733-1	11/09/2005	35-22-41	060-25-15	322	1000	B	License Holder	N
GA	WRV746-2	11/09/2005	33-26-15	062-08-25	587	1000	B	License Holder	N
SC	WRV843-1	11/09/2005	35-06-20	062-37-02	79	1000	B	License Holder	N
NC	WRV843-5	11/09/2005	35-14-01	061-16-36	187	1000	B	License Holder	N
FL	WRV843-6	11/09/2005	34-11-20	061-24-19	307	1000	B	License Holder	N
FL	WRV374-12	05/30/2011	28-32-22	81-32-43	279	1000	A	CCN License	Y
NY	WRV374-14	05/30/2011	40-50-31	73-01-34	181	1000	A	License Holder	N
NJ	WRV374-15	05/30/2011	40-50-04	74-13-20	200	1000	A	Passport - New York	Y
PA	WRV374-16	05/30/2011	40-50-04	74-13-20	200	1000	A	License Holder	N
DE	WRV374-17	05/30/2011	39-48-01	73-53-39	190	1000	A	License Holder	N
NY	WRV374-18	05/30/2011	41-04-13	73-47-23	171	1000	A	License Holder	N
FL	WRV374-19	05/30/2011	26-41-07	66-15-53	343	1000	A	Passport - New York	Y
VA	WRV374-2	06/30/2011	36-54-23	71-40-19	422	1000	A	License Holder	N
ME	WRV374-20	05/30/2011	43-55-28	70-25-26	400	1000	A	License Holder	N
SC	WRV374-21	05/30/2011	30-22-45	81-40-59	210	1000	A	License Holder	N
SC	WRV374-22	05/30/2011	32-49-14	76-87-24	269	1000	A	License Holder	N
NJ	WRV374-23	05/30/2011	35-47-06	78-57-43	400	1000	A	License Holder	N
GA	WRV374-24	05/30/2011	40-19-31-4	74-24-55-5	121	1000	A	License Holder	N
GA	WRV374-25	05/30/2011	32-04-22	81-04-44	269	1000	A	License Holder	N
VA	WRV374-26	05/30/2011	34-16-04	78-00-41	269	1000	A	License Holder	N
VA	WRV374-27	05/30/2011	36-08-00	76-25-03	174	1000	A	License Holder	N
VA	WRV374-28	05/30/2011	37-56-52	77-50-54	260	1000	A	License Holder	N
PA	WRV374-29	05/30/2011	40-02-30	75-14-22	210	1000	A	License Holder	N
MD	WRV374-3	05/30/2011	38-26-10	76-36-18	400	1000	A	License Holder	N
MD	WRV374-31	05/30/2011	38-26-10	74-00-49	751	1000	A	License Holder	N
NY	WRV374-34	05/30/2011	41-51-54	71-17-13	259	1000	A	License Holder	N
PR	WRV374-35	05/30/2011	18-18-28	66-47-38	400	1000	A	License Holder	N
MA	WRV374-36	05/30/2011	34-00-02	76-08-30	285	1000	A	License Holder	N
NC	WRV374-37	05/30/2011	27-53-38	82-42-22	413	1000	A	CCN License	Y
FL	WRV374-38	05/30/2011	41-25-23	72-57-04	345	1000	A	License Holder	N
FL	WRV374-40	05/30/2011	28-45-44	80-04-40	391	1000	A	License Holder	N
FL	WRV374-8	05/30/2011	28-45-44	80-04-40	391	1000	A	License Holder	N

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Additional Sites

Location	State	LAT	LONG	Purpose	Revenue Generating
Exchange Place	NY	40-42-18	74-0-51	PassPort - New York	Y
Dix Hill	NY	40-46-59	73-22-1	PassPort - New York	Y
Trenton	NJ	40-14-19	74-46-0.6	PassPort - Philadelphia	Y
Dorsetown	PA	40-19-33.6	75-10-19.4	PassPort - Philadelphia	Y
Chestnut Hill	PA	40-4-24	75-11-28	PassPort - Philadelphia	Y
Concordville	PA	39-53-22	75-31-35.7	PassPort - Philadelphia	Y
Legg Mason	MD	39-17-15	76-36-59	PassPort - Baltimore/DC	Y
Frederick	MD	39-29-39	77-29-55	PassPort - Baltimore/DC	Y
Bethesda	MD	38-37-49.9	77-8-17.1	PassPort - Baltimore/DC	Y
Independent Hill	VA	38-39-25.2	77-25-59.7	PassPort - Baltimore/DC	Y
Upper Merion	MD	38-52-33	76-41-22	PassPort - Baltimore/DC	Y
Seers Tower	IL	41-52-44	87-38-8	PassPort - Chicago	Y
Aurora	IL	41-48-27	88-18-8	PassPort - Chicago	Y
LAX	CA	33-57-34	118-26-12	MPT-1327 - SoCal	Y
Verdugo Hills	CA	34-12-54	118-15-33	MPT-1327 - SoCal	Y
Fresno M/W	CA			MPT-1327 - NoCal	N
Coalinga M/W	CA			MPT-1327 - NoCal	N
Portland M/W	OR			MPT-1327 - NW	N
Modesto M/W	CA			MPT-1327 - NoCal	N
No Cal Switch	CA			MPT-1327 - NoCal	N
So Cal Switch	CA			MPT-1327 - SoCal	Y

Other Mobex Licenses

Location	State	Call Sign	Exp Date	LAT	LONG	Antenna Ht to Top	ERP	NOTES
Vessel Mobile	n/a	KJ58265	08/07/2012					
Experimental License	n/a	KJ42265	10/01/2006					
Jeffersonville - WFN	IN	WFN	05/13/2013	38-17-04	085-43-00	66		
Radar - Jeffersonville	IN	WJ1877	01/05/2015	38-17-04.2N	85-42-57.8W			
Microwave - Jeffersonville	IN	WLN611	02/01/2011	38-17-04.2N	85-42-57.8W			
Microwave - Evansville	IN	WLN612	02/01/2011	38-11-33.2N	85-45-37.8W			
Millon	KY	WRO680	06/23/2013	38-43-15	85-22-28	285		156.8 MHz, 161.85 MHz

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Attachment 2

(Referenced and fully incorporate in the text of the Petition to Deny)

The Waiver Request is Defective Procedurally and Substantively,
and Is An Attempt At Wholesale Conversion of
AMTS Part 80 Service to Part 90 Service, and Should be Denied

Also with Comments on the Technical Showing for the Related
License Modification Filing

1. The subject waiver request (“Waiver Request”) fails on multiple to even approach the standards for waivers, which are exceptions to otherwise valid rules not being challenged.

2. First, the Waiver Request attempts, by its own language, to obtain the equivalent of Part 90 rules and regulatory status. It goes beyond an effective request for change of rules (which is not permitted under waiver requests), to one that effectively requests the FCC to declare its laundry list of Part 80 rules, and any others it can’t even name, as not applicable to the AMTS spectrum and service of the applicant utility.¹ This attempt should be summarily denied.

3. Further, MLMC and its predecessor had opportunity to seek rule changes that is now effectively seeks, in the extenuated rule making proceedings on AMTS that it was a prime cause of, and that it cites in the Waiver Request, including the 2007 Order cited on page 3, footnote 4 (the “2007 Order”). However, failing to argue and obtain the results in that Order, and failing to seek reconsideration, MCLM now attempts and end run by a “waiver” request. While submitted by a utility in contract with MCLM, the License Purchase Agreement (a *redacted unsigned un-certified* copy of which was filed in relation to this Waiver Request and the Application) (the “Purchase Agreement”) it is clear in said Purchase Agreement that the Waiver Request is a material condition negotiated and agreed to by MCLM, and must thus be seen as an MCLM request also. Thus, the Waiver Request should be denied on this basis also: this form of wholesale

¹ It is clear in the public record that MCLM has done nothing to build and operate its AMTS geographic licenses, and instead, warehoused them and now has listed all of them for sale with Spectrum Exchange (the apparent broker/ marketer, to obtain a finders fee, indicated in the unsigned redacted copy of the License Purchase Agreement). It is further apparent that MCLM (and its broker-marketer) seek to make this unique Part 80 spectrum -- that for years MCLM and its predecessors in interest (including Mobex) repeatedly informed the Commission it was going to use for maritime services, in order to get site-based AMTS licenses nationwide for free—into effective Part 90 spectrum, so it will be easier to sell it to the market it believes will buy it: utilities and others used to Part 90 spectrum. That does not, of course, meet any FCC rule waiver standard, but merely indicates unlawful intent to obtain and warehouse spectrum.

relief, that is also not unique to this utility, could have been sought in that rulemaking, but cannot be sought in the form of a “waiver” request.

4. The Waiver Request does not demonstrate unique needs of this utility, rather, it mostly asserts that companies like this utility want Part 90 spectrum or the equivalent, and it even cites and emphasizes (in italics) FCC decision language about how AMTS can be used for these purposes: see page 10, in italics. However, that language instructed MCLM and other existing and prospective AMTS licensees that the 2007 Order provided the relieve needed to fulfill that italicized statement: all the licensee had to do is file a proper Section 20.9(b) certification to use AMTS for PMRS, and the Order also, for the purpose of that language, modified Section 80.123 as needed.

5. Regarding the Waiver Request’s suggestion this 2007 Order gave guidance on AMTS licensees seeking waivers of the sort being sought here (see page 3, 3 line from top)—as if to justify this Waiver Request to effectively convert to Part 90 service-- that is patently incorrect: the 2007 Order made clear what we write immediately above, and its reference to waivers that may still be needed indicated that this AMTS Part 80 service is still a maritime service, notwithstanding the flexibility provided in the order (mostly by the above noted amendment of Sections 80.123 and 20.9(b)).

For example, the Order did not do away with Section 80.123’s requirement to provide priority to maritime service, even if a licensee opted out of CMRS by a valid Section 20.9b certification that the FCC approved. In that regard, this Waiver Request entirely fails to show why the utility company applicant can not provide that priority. Even if it opts out of CMRS to PMRS as just noted, and provides service to land as Section 80.123 clearly allows (that no longer must be “public correspondence” service) the licensee may still (1) have within its service contours navigable waterways (and this utility has major navigable waterways with heavy maritime traffic) and (2) may have authorized uses of its AMTS stations on the waterways, and in such cases, it should indeed give priority to maritime users since they are far more at risk of life and property than land users: that is a fundamental of Part 80 service vs. Part 90 service and it should not be changed including by “waiver.”

6. Moreover, if a rule waiver is granted, it becomes a condition on the license and remains on it even if the license or part of it is assigned to another entity (except in special cases such as termination and resale by the FCC). The subject spectrum is along a major US navigable waterway, part of the Mississippi River inland waterway systems. The argument above is of special importance with regard to AMTS spectrum along such major inland (or coastal) navigable waters.² Especially along major US navigable

² Petitioners are involved mostly in FCC licenses use for Intelligent Transportation Systems, with partners including major US university institutes and their State agency supporters, including University of California and the State of California Department of Transportation. Petitioners know first hand, in detail, the growing importance of wireless for ITS in all modes, land, rail, air, and maritime. AMTS is ideal for advanced, higher data rate, ITS radio services to maritime traffic. Indeed, that is one focus of Petitioners

waterways, AMTS spectrum should not be effectively converted to Part 90 spectrum by “waivers” (or any other means) and thus have no obligations to give priority to maritime traffic, or to have base station equipment certified to provide maritime service.³

7. In the Waiver Request, MCLM reliance on the waivers granted to NUSCO and PacifiCorp with regard (respectively, of AMTS and VPC spectrum) fails. Petitioners were the parties who sold these companies the subject spectrum. Those waivers were needed only since the 2007 AMTS Order had not been issued, as further discussed above.

8. The Petition Request baldly asserts that due to certain undocumented hilly terrain in apparently some of the subject area, it needs waivers. It provides no details of the asserted especially hilly terrain, nor why that requires waivers of the already high power allowed for AMTS operations and the already exceptionally excellent propagation of 217-222 MHz, enhanced by the relative “quiet” nature of this band. Thus, the Petition Request fails on that basis.

9. Regarding the license modification filing: The technical showing with regard to the site specific engineering also fails.

First, there is no indication anywhere in this filing or in the Application, or Waiver Requests (they are all related and all part of the Purchase Agreement) that the affected TV stations were notified as required. The showing and the modification must be rejected on this basis alone, since the affected TV stations were afforded no opportunity to review and comment or oppose.

Also, the technical showing does not explain the method or show any means to verify the method used to determine the alleged household counts. Petitioners have first hand experience (that the technical showing’s author also knows, since he is involved in this with Petitioners) that radio contour software that estimate counts of Population (or in this case, households) use estimates and the estimates can be substantially incorrect, in the program, and as an engineer using the program attempts to apply the program. There is simply no official US source of population or household

in their business plans for AMTS, which they have in part discussed with Federal and State agencies, including the US Coast Guard. (See also the section herein, and Attachment 1, that in part note Petitioners developments of technology and equipment for the just noted AMTS maritime ITS services.) Petitioners develop of ITS radio services (technology, equipment, business models, deployment plans, etc. are indicated in part in FCC NPRM docket 06-49).

³ It is relatively easy for equipment companies whose equipment is Part 90 certified to also get it certified under Part 80. Indeed, Petitioner Telesaurus VPC did that with regard to P25 equipment it used for some of its VPC stations. Unless, and it is not currently the case, Part 80 and Part 90 equipment rules are identical, it must be assumed that the FCC had good cause for the Part 80 rules to be what they are, to provide the needed service to the Maritime community, with its priority on safety of life and property.

counts by square mile or other granularity sufficient for an accurate count, but here, there is not even any explanation of the method used.

10. The Waiver Request show no other evidence of why this applicant utility has special unique need justifying any of the waiver requests. In addition, the request itself admits that many of the rules it wants waived do not apply to AMTS.

For the above reasons, the Waiver Request should be denied, and since it is a condition of the subject assignment Application, the Application should be denied on this basis alone.

Attachment 2

Harm resulting in unbalanced adjacent band networks

The proposed waiver allowing more power and added height to mobiles and fixed repeaters in the A band would cause great harm to the B band spectrum holder, reducing the operating range and capacity of the B band operator. Some of these issues can be partially mitigated, but at very large monetary costs. Because the bands are adjacent, an increase in power and/or antenna height of an A repeater will correspondingly increase the blackout range for B band mobiles near an A repeater. Due to the more favorable propagation characteristics of 200MHz compared to 900 MHz the operating range will typically drop from 100km at 200MHz to less than 10km at 900 MHz. Unfortunately this longer range applies to 200MHz interference as well. Therefore, were the A operator to increase EIRP by 6 db, this would quadruple the zone of unusable signals for B. Additionally; B proposes to use high capacity modulation such as 64 QAM which is more vulnerable to interference. This additional interference due to A prevents usage of 64 QAM over a very large area.

A typical scenario today may prevent operation of mobiles within 100m of, say, an A mobile near a B repeater because the B interference can be thousands of times more powerful than the signal from the distant B transmitter. As mentioned above this 100m unusable would double, but worse the unusable range for B being able to operate at 64 QAM would extend well beyond 1km from A's repeater.

Were A to double the antenna height and quadruple the output power, the interference area becomes 16 times larger for each repeater.

Higher power A band mobile transmitters result in more interference into the B repeater receiver. To some extent, higher isolation and much more expensive filters can reduce the interference. Even so, an A band mobile close to a B repeater station can overwhelm the signal coming from a more distant B mobile.

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